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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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9 GUADALUPE SOLIS ALVAREZ, No. CIV S-05-0689-DFL-CMK-P

10 Petitioner,

11 vs.

FINDINGS AND RECOMMENDATIONS

12 JAMES YATES, et al.,

13 Respondents.
14 _____/

15 Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of
16 habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is respondents' motion to
17 dismiss (Doc. 16).¹

18 Petitioner was convicted of aggravated sexual assault of a child, in violation of
19 California Penal Code § 269(a)(1), and sentenced to 15 years to life in state prison. Petitioner's
20 conviction and sentence were affirmed by the California Court of Appeal on May 9, 2003. The
21 California Supreme Court denied review on July 23, 2003. Petitioner did not file any collateral
22 actions in state court. The instant habeas corpus petition was filed on March 22, 2005.

23 As respondents correctly note, a one-year limitations period applies to this case
24 pursuant to 28 U.S.C. § 2244(d)(1). Petitioner had one year from the date his conviction became
25 _____

26 ¹ The court will address petitioner's motion for appointment of counsel by separate order.

1 final within which to file a federal habeas petition. See Patterson v. Stewart, 251 F.3d 1243 (9th
2 Cir. 2001). Petitioner's conviction became final following expiration of the 90-day period to
3 seek review by the United States Supreme Court. See Wixom v. Washington, 264 F.3d 894 (9th
4 Cir. 2001). Here, the 90-day period ended on October 21, 2003. Thus, petitioner had until
5 October 21, 2004, to file a federal habeas petition. Because petitioner did not file any state court
6 collateral actions, petitioner is not entitled to tolling under 28 U.S.C. § 2244(d)(2).

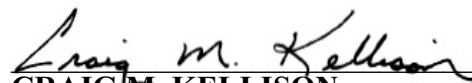
7 The instant petition was filed on March 22, 2005 – five months late. Petitioner
8 has not filed any previous federal habeas petitions, and petitioner has not alleged any basis for
9 equitable tolling.

10 Based on the foregoing, the undersigned recommends that:

- 11 1. Respondent's motion to dismiss be granted;
- 12 2. The instant petition for a writ of habeas corpus be dismissed; and
- 13 3. The Clerk of the Court be directed to enter judgment and close this file.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court. The document should be captioned "Objections to Magistrate Judge's
18 Findings and Recommendations." Failure to file objections within the specified time may waive
19 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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21 DATED: February 6, 2006.

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23 
24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
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